

Update To Judge Cobb's Evidence Manuscript

January 2018

- I. Rule of Evidence 414- This new rule implements N. C. Gen. Stat. § 8-58.1 which was passed in 2011. It limits the admissibility of medical bills in personal injury actions to those “amounts paid or required to be paid.” I find that the parties ordinarily stipulate as to the amount of medical bills in personal injury cases. Both sides have incentives to do so.
 - A. Practice pointer Number One- The pattern jury instructions give excellent guidance as to how to deal with this issue.
 - B. Practice pointer Number Two- There is pending litigation as to the facial constitutionality of this Rule. You will see many cases in which there is a facial challenge. Keep in mind that you are to proceed with every issue in the case that can be resolved, including the trial on liability and maybe even the trial on all other damages in the case.

- II. Confrontation issues in child abuse cases- Ohio v. Clark (referenced in Judge Cobb's paper) was decided by the U. S. Supreme Court in 2015. It held that a victim's statements to her preschool teacher were not testimonial, even in a state such as Ohio where there is a mandatory reporting requirement of child abuse. Ohio v. Clark, 576 U.S. ___, 135 S. Ct. 2173 (Jun. 18, 2015). Always see Professor Smith's Criminal Case Compendium for the most current law. <https://www.sog.unc.edu/sccc>.

- III. Authentication of Social Media-In State v. Ford, ___ N.C. App. ___, 782 S.E.2d 98 (Feb. 16, 2016), the Court has a long discussion of the issues concerning the authenticating of web pages. The short answer is that circumstantial evidence will support a trial court's ruling that a web page is authentic. The long answer is that this issue is complicated and evolving and you need to find out ahead of time whether a party is offering social media and whether anyone objects, so you can be ready to rule when the time comes.

IV. Expert opinion in child sex cases- This is a hot topic. State v. Watts, ___ N.C. App. ___, 783 S.E.2d 266 (Apr. 5, 2016) temp. stay granted, ___ N.C. ___, 783 S.E.2d 747 (Apr 13 2016), contains a good discussion of some of the issues. The crux of the issue is whether state's experts are "vouching" for the credibility of the child victim and/or expressing an opinion about whether the child was sexually assaulted. The analysis is very fact specific.